

**Minutes of the August 10th, 2005 meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine**

Present: Chair Jean Ginn Marvin; Hon. Michael T. Bigos; Hon. Vinton E. Cassidy. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

Absent: Andrew Ketterer

At 9:03 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the April 8th, 2005, May 10th, 2005 and June 8th, 2005 meetings

Mr. Bigos moved to accept the April 8th and May 10th meeting minutes and the Commission voted unanimously (3-0) to ratify the minutes of April 8th and May 10th.

Mr. Bigos moved to accept the June 8th meeting minutes, Chair Ginn Marvin seconded and the Commission voted unanimously (3-0) to ratify the minutes of the June 8th 2005 meetings.

Due to early arrivals, items were taken out of order.

Agenda Item #2 – Overspending of MCEA Funds/John Linscott

The director explained that Mr. Linscott was a MCEA candidate and had opened a bank account with \$50 of his own money. The director stated that normally candidates started the bank account with their own money and then would take it back out when the seed money contributions started coming. The director went on to say that Mr. Linscott had not received any advice from the staff and inadvertently spent \$35.72 of the \$50.00. The director and the commission staff believed that Mr. Linscott spent some of his personal money and should have been spending the MCEA funds. The director went on to explain that he had been in contact with Mr. Linscott and Mr. Linscott had explained that it was a mistake. It was explained that Mr. Linscott did not like the fact that he was being fined and was at the meeting to voice his opinion and answer any questions. The staff recommended a penalty of \$35.72 because this was the amount that Mr. Linscott mistakenly spent.

The Director stated that the Commission staff did some research and found that they were 3 other cases such as Mr. Linscott's. It was explained that the Commission members could stay with the suggested penalty or after Mr. Linscott's explanation or they could reduce it.

Mr. Linscott took the floor and explained that he was an ethical person and would never cheat. He stated that he went to open the bank account and put \$50 of his own money in. He went on to say that once the campaign got under way he wondered how he would get the money out; how would he account for it. Mr. Linscott explained that he had received a letter from the commission that he owed an amount; he could not recall the exact number. He said that everyone who knew him thought of him as an honest person. He explained that it was not his intention to de-fraud anyone and he was here today because he wanted to make sure the Commission understood that he was an honest man and very ethical.

Mr. Cassidy stated that it is these types of situations that the Commission can be more lenient on and that the Commission was not questioning Mr. Linscott's honesty. Mr. Bigos asked how much Mr. Linscott returned to the commission. The director explained that Mr. Linscott had returned \$14.28 of his own money; therefore if the Commission members felt that the \$35.72 penalty was correct he would only owe \$21.44. The director went on to say that another option would be for the Commission members to say that the \$14.28 already paid by Mr. Linscott would be sufficient enough for a penalty. Mr. Linscott interjected that he actually returned more money; such as the unauthorized funds that he didn't need to spend. Mr. Bigos asked how much. The director estimated that it was around six thousand that Mr. Linscott had returned.

Mr. Bigos asked Mr. Linscott if he had received matching funds towards the end of the campaign and of the received funds did he deposit them into his account. Mr. Linscott explained that the funds were automatically deposited into his account and that he had to do nothing to receive it. Mr. Linscott questioned the MCEA funds and how they were transferred to his account, but it was unclear what he could and could not spend. Mr. Cassidy explained that the reason for the money to be transferred near the end of the campaign was so the candidate could spend more money. Mr. Linscott stated that other candidates had told him to spend the money, but he didn't feel comfortable doing that so he didn't spend all of it but did spend some. He ran some ads and did some mailings; and was bothered by the fact that he had to spend money just because it was in his account.

Mr. Cassidy moved to accept the \$14.28 already returned to the staff by Mr. Linscott as payment enough. Mr. Bigos seconded and the Commission voted unanimously (3-0) to agree that the \$14.28 already paid was the penalty.

Mr. Linscott thanked the Commission members and Jonathan Wayne.

Agenda Item #5 – Request for Waiver of Late-Filing Penalty/Thomas Kane

The director explained that Mr. Kane was a lobbyist for Maine Health and became quite ill shortly before the July 15th lobbyist filing deadline and ended up not filing his report until the 21st of July. Under the statute there is a civil penalty of \$100 for filing reports late. The director went on to say that Mr. Kane had sent a letter on July 20th to the staff requesting that the penalty be waived due to the circumstances that prevented him from making the deadline. The director explained that it was the staff's initial thought not

waive the penalty because there were numerous days before the deadline when Mr. Linscott could have sent in his report. The director went on to say that the staff had received a letter from Mr. Kane's doctor explaining the food poisoning Mr. Kane had and that it had rendered him incapacitated for a little over a week. Therefore, the staff rethought its assessment of the penalty and did not have a problem waiving it.

Mr. Kane took the floor and reiterated what Mr. Linscott had said. Mr. Kane also just wanted to stress that he had not been negligent or dishonest on purpose. Mr. Kane explained that another person that was at the brunch with him also contracted food poisoning. Mr. Kane asked that the Commission members consider his bout with food poisoning as a reason why his lobbyist report was filed late.

Mr. Cassidy moved to waive the penalty due to the circumstances. Mr. Bigos seconded and the Commission voted unanimously (3-0) to waive the penalty.

Agenda Item #3 – Proposed Policies on Travel, Lodging, and Meals by MCEA Candidates

The director explained that this was an issue that had received some attention in the press. He went on to say that the commission staff was struggling to come up with guidelines for candidates on regarding their MCEA funds and whether they could spend it on travel or food. The director went on to explain that the statute said that MCEA funds have to be spent on campaign related activities and that the commission is authorized to decipher what constitutes as campaign related issues. The director explained that the proposed policy made a distinction between the candidates for the Legislative campaign and the candidates in the gubernatorial campaign.

The commission staff recommended for the legislative candidates that an occasional spending of public funds on a meal would be permissible as long as it was within suggested rates. This was suggested due to the size and amount of miles the candidate would have to travel for their campaign. The director explained the rates the staff had used were rates set forth by the National Association of Counties and US General Services Administration; which are also used by other government employees. It was explained that under this new policy if the candidate was very far from home, he/she could spend \$15 of public funds on food for themselves, but any additional people or money that needed to be spent would have to be of their own. In addition, \$100 of public funds could be spent on lodging if the candidate was in traveling far from home. The director explained that the amount of public funds they could spend depended on where they were, for example staying or eating in Bar Harbor could be a little more expensive.

The director went on to say that the staff was a little reluctant in regards to the new policy because it had been noted that a lot of MCEA candidates choose not to spend their public funds on food or lodging. It was thought that the public might have some more concerns about the public funds program and it's possibly not that necessary.

Mr. Cassidy stated that he was under the impression that the staff does pay for food and gas for certain candidates. He stated that he thought the original policy was a better idea.

Mr. Bigos stated that he agreed with the director's analysis and thought it was reasonable to think that a candidate who is campaigning in Washington County might need to stay there or grab something to eat. Mr. Bigos asked what the going rate for mileage reimbursement. The director answered that the candidate could either be reimbursed for .34 a mile or they could be reimbursed for the money they had spent on gas. Ms. Ginn Marvin asked if this applied to Legislative candidates only. Mr. Bigos stated that he was indeed speaking only of Legislative candidates. The director surmised that Legislative candidates would be able to spend the aforementioned amounts on food and lodging if necessary.

Phyllis Gardiner stated that she remembered an instance where there were lots of questions asked because candidates were spending public funds on meals for their campaign workers to go over the campaign. Mr. Bigos asked if this was a frequent situation, or had it happened before. Ms. Gardiner agreed that it was a unique situation, but remembered a few different times the question had come up. Ms. Ginn Marvin stated that public scrutiny would be there and it would be advised not to spend the public funds that way. But if the candidates chose to spend their money that way or not to their best interest; then there was not much to be done.

Mr. Cassidy then asked if we currently reimbursed the candidates for mileage. He went on to say that some of the districts were very spread out and that when he was running he had kept a log to remind himself how much he had used for gas.

Ms. Ginn Marvin suggested that the members move on to the gubernatorial candidates. Paul Brunetti, with the House Democratic Campaign Committee, took the floor and stated that he wanted to say that they always advise their MCEA candidates not to spend the public funds on food or lodging. He went on to say that in the instances when people are under financial strain it is nice that they may use the public funds for help. He urged the Commission members to really consider allowing the MCEA candidates to be able to use the public funds if necessary and not to pass a rule that would not allow them to do so. Ms. Ginn Marvin asked Mr. Brunetti why the candidate should get money for lodging in addition to getting money for gas reimbursement. She stated that it seemed that the gas reimbursement would be enough and they would be able to drive home instead of staying overnight somewhere. Mr. Brunetti responded that some of the districts are 50 or 60 miles away and if the candidate has to do it back to back it might put a strain on them and on their financial status. He went on to say that if there were debates scheduled 2 days in a row it would put a strain on the candidate that had to travel over an hour each way; therefore it would be easier if the candidate could just stay over at a motel. Mr. Brunetti thought that in a situation as such the candidate should be able to ask the commission what is appropriate, but not to abuse it. It should not be an open and shut case. Ms. Ginn Marvin made the point that their opponent would be in the same situation. Mr. Brunetti agreed and went on to say that it was not an advantage to use your

public money for lodging, therefore making it a decision left up to the candidate. Should they spend the \$100 on a place to stay for the night or on phone calls to the district?

Joseph Greenier, a concerned citizen, took the floor and stated that he was concerned that unless the MCEA candidate had a lot of money there would be some need for them to spend public funds. Mr. Greenier stressed that MCEA was for people who are under financial strain, but wanted to run for office. He went on to say that money should not decide whether the candidate is good or not.

Ms. Ginn Marvin thanked Mr. Greenier and suggested moving on to the gubernatorial guidelines.

The director interjected that if the Commission was persuaded at all by Mr. Greenier or Mr. Brunetti, that they could set forth guidelines for the candidate to ask permission or get pre-approval beforehand to spend money on lodging.

The Commission then moved on to go over the gubernatorial guidelines for spending of public funds on meals or lodging. The director stated that the commission staff suggested that gubernatorial candidates could spend money on meals and lodging both in and out of the state as long as it was within the proposed amounts. He went on to say that the staff was not recommending any pre-approval from the commission; just the recognition that they would have to travel the state for their campaign. Mr. Cassidy asked if these rates were the same rates as mentioned before; the director stated that they were. Mr. Bigos asked if there was a cap on lodging and meal fees outside of Boston. The director explained that the staff was going to recommend higher caps for Boston, New York and other big cities and wherever else they would look at it as a case by case. Mr. Bigos thought that it might be a better idea to come up with a daily cap or something along those lines. Ms. Ginn Marvin asked if in the past a gubernatorial candidate who went to DC for training had to pay for everything out of their own pocket. The director stated that was not the case. He went on to say that the Commission members could decide to not go along with the commission's recommendation and not allow gubernatorial candidates to not use public funds. Ms. Ginn Marvin asked what had happened in the past. Ms. Gardiner said that there was no guideline in place that precluded the MCEA.

Ms. Ginn Marvin asked whether it was permissible for a gubernatorial candidate to be expected to pay their own way and stay in DC if they had to go there for some sort of training. The director responded that it would be a personal contribution and they would have to report it as an expenditure. The commission discussed various situations that would constitute using public funds and how to report the use of the funds or their own personal funds.

Mr. Bigos stated that he needed a little more input from the parties involved and went on to agree with the director regarding the public scrutiny.

Ms. Ginn Marvin questioned if a motion was needed. Ms. Gardiner explained that if the overall conclusion was not to adopt the proposed guidelines and keep the old ones then

no vote was needed. The director stated that he wanted to come back to the next meeting with a final guideline for the Commission to vote on. Ms. Gardiner agreed that that was a good idea and that maybe it would be easier to adopt new guidelines every election cycle.

The Commission members asked the director to draft up a new proposal for them to go over at the next meeting.

Agenda Item #4 – Proposed Assessment of Civil Penalty against John Fink

The director explained that Mr. Fink was a candidate in the 2002 election. He went on to say that Mr. Fink had a surplus of \$1,204.17 left over from the 2002 election and because of this he is required to file a semiannual campaign finance report. The director stated that in November 2003 they Commission staff had referred him to the Attorney General's office for a possible criminal offense because he was required to file semiannual reports to the Commission and had not done so to date. The director explained that Mr. Fink is one of many candidates who have an outstanding surplus left over from an election that is required to file these semiannual reports. The director spoke with Mr. Fink and came to an agreement that if the Commission members approved of it Mr. Fink could just forfeit his surplus money and that would solve the problem.

Ms. Ginn Marvin questioned the director as to why Mr. Fink was required to file the semiannual reports. The director explained that any candidate after an election had surplus cash or a loan/debt of more than \$50 in their account had to file these reports. Ms. Ginn Marvin asked how long they were required to file these reports. The director answered that in the case of surplus cash; the candidate was required to dispose of the cash within 4 years of the election. He went on to say that in the case of a loan or a debt the filing of the reports could go on indefinitely.

Ms. Ginn Marvin asked if the director thought the staff could come up with an idea or system so that the candidates would not have to file these semiannual reports. The director answered that the Commission staff would write up a Legislative proposal for this.

Ms. Gardiner agreed that this would be a good idea because candidates normally just ignore requests to file these reports and this would be a good way to just wrap it up.

Mr. Greenier asked if it was Clean Election funds why the candidate was allowed to keep it. The director explained that in this case it was not Clean Election funds.

Mr. Bigos moved that the recommendation by the staff be accepted. Mr. Cassidy seconded and the Commission voted unanimously (3-0) to have Mr. Fink return the surplus he had in the amount of \$1,204.17.

Agenda Item #6 – Referral to Attorney General/Matthew Gagnon

The director informed the Commission members that the issue was resolved and the Commission moved on to the next item.

Agenda Item #7 – Referral to Attorney General/Christopher M. McCarthy

The director explained that following the July meeting the commission had sent him a letter advising him that the Commission had not reconsidered their motion of assessing a penalty of \$8,910. The director went on to explain that the letters that were sent to him outlined a payment plan of \$400 a month. The director stated that he had called Mr. McCarthy left 2 voicemail messages for him and had called him the week before meeting. He also sent him a letter to let Mr. McCarthy know he would be at the August 10th meeting agenda to be referred to the Attorney General's office. The director recommended sending him a final letter to advise him that if a payment was not received by August 31st the Commission would refer him to the AG's office.

Ms. Gardiner added that if this was going to be the last action to be taken against Mr. McCarthy the Commission should give him until September 3rd.

Mr. Bigos moved, Mr. Cassidy seconded and the Commission voted unanimously (3-0) to refer Mr. McCarthy to the Attorney General's office if no payment was received by September 3rd.

Agenda Item #8 – Vacancy on Ethics Commission

Ms. Ginn Marvin explained that this was talked about a little before the meeting and suggested that the Commission members come up with a list of names to talk about at the next scheduled meeting.

Mr. Greenier took the floor and asked whether the new Commission member would be an Independent considering the Board was already made up of 2 Democrats and 2 Republicans. Ms. Ginn Marvin answered in the positive that the new member would be an Independent as the statute called for it.

Ms. Ginn Marvin asked if there was any other business the commission wanted to present to the members. The director stated that there was one small administrative issue. He went on to say that it was part of the Commission's statute to provide a report to the Legislature every four years to let them know how the Maine Clean Election Act was doing. The director explained that it had been postponed and the staff hoped to get a report to the Legislature by December. In addition, he explained that many people from other states, such as academic personnel or government officials had been taking an interest in how the Clean Election Act worked. The director explained that he wanted to compile a 30 page report and wondered if it would be something they could have professionally put together to make it look nice. He wanted to know if he could take

\$10,000 out of the MCEA money to spend on having a graphics person or web designer to help with the project. The director felt that it was something that could be done by the commission staff; but wanted a real professional look to it. The director thought it would be a good idea to have professional piece to give to the Legislature but also to be able to let other State government agencies look at it. The Commission members agreed that it was a good idea and requested the director put together a proposal.

Mr. Cassidy stated that he thought it was a good idea, Mr. Bigos also agreed that it would be a good idea to put together a sort of “bible” for the Commission. Mr. Cassidy stated that he would like the director to come up with some different options. The director asked if costs were \$7,500 would the staff be okay with it, would it be an acceptable amount to spend. Ms. Ginn Marvin stated that she new of someone who did newsletter printing and commented that it was a good decision made by the director to bring it to the Commission. It was also suggested that the Commission could possibly look into having students do the design work also.

There being no further business, the Commission adjourned.